

REMARKS

Claims 1-20 are pending in the application.

Claims 1-20 are rejected.

Claims 1, 9 and 13 are currently amended.

Claim Rejections under 35 U.S.C. § 103

Claims 1-20 were rejected under 35 U.S.C. 103(a) as being unpatentable over Lowry et al. (U.S. Pat. No. 6,376,544) in view of Mulchandani et al. (U.S. 5,108,767).

It is respectfully submitted that Lowry et al. in view of Mulchandani et al. fails to render claims 1-20 within the contemplation of 35 U.S.C. 103(a), as is set forth herein below.

Lowry et al. in view of Mulchandani et al. fails to teach invention of claims 1-8

It is respectfully submitted that Lowry et al. in view of Mulchandani et al. fails to teach or suggest all of the limitations of claims 1-8 since Lowry et al. in view of Mulchandani et al. fails to teach or suggest a dietary supplement comprising "...a homogenous mixture of calcium caseinate, whey protein, L-carnitine and arginine, wherein protein is a sole dietary source of metabolic energy in said mixture", as set forth in amended claim 1 and defined by claims 2-8 as dependent therefrom.

In contrast, the Lowry et al. patent teaches the use of lipids and carbohydrates as energy sources in a nutritional product for renal failure patients. In col. 4, lines 50-53 of the Lowry et al. patent, it is stated, "The

composition, designed to meet the nutritional needs of humans with renal failure, contains ingredients such as a protein (amino acid) source, a lipid source, and a carbohydrate source".

Mulchandani et al. teaches the use of lipids (fats) as an energy source (col. 6, lines 7-17) in a nutritional product for renal dialysis patients.

Therefore, it is respectfully submitted that Mulchandani et al. would fail to provide any teaching, suggestion or motivation to a person of ordinary skill in the art to modify the Lowry et al. nutritional product in such a manner that "protein is a sole dietary source of metabolic energy" in the Lowry, et al. nutritional product, as defined by claims 1-8.

Accordingly, it is respectfully submitted that Lowry et al. in view of Mulchandani et al. fails to render claims 1-8 obvious under 35 U.S.C. 103(a). Reconsideration and allowance of claims 1-8 is therefore respectfully solicited.

Lowry et al. in view of Mulchandani et al. fails to teach invention of claims 9-12

It is respectfully submitted that Lowry et al. in view of Mulchandani et al. fails to teach or suggest a dietary

supplement comprising "a batch consisting of about 100 kg of calcium caseinate, from about 33 kg to about 200 kg of whey protein, from about 667 g to about 5 kg of L-carnitine, and from about 6.67 kg to about 50 kg of arginine", as set forth in amended claim 9 and defined by claims 10-12 as dependent therefrom.

Reference is made to MPEP 2111.03, where it is stated, "The transitional phrase 'consisting of' excludes any element, step, or ingredient not specified in the claim". *In re Gray*, 53 F.2d 520, 11 USPQ 255 (CCPA 1931).

As was noted herein above, the Lowry et al. patent teaches the use of lipids and carbohydrates as energy sources in a nutritional product for renal failure patients (col. 4, lines 51-53), and Mulchandani et al. teaches the use of lipids as an energy source in a nutritional product for renal dialysis patients (col. 6, lines 7-17).

Therefore, it is respectfully submitted that Mulchandani et al. would fail to provide any teaching, suggestion or motivation to a person of ordinary skill in the art to exclude the use of lipids as an energy source in the Lowry et al. formulation, as defined by claims 9-12.

Accordingly, it is respectfully submitted that Lowry et al. in view of Mulchandani et al. fails to render claims 9-12 obvious under 35 U.S.C. 103(a). Reconsideration and

allowance of claims 9-12 is therefore respectfully solicited.

Lowry et al. in view of Mulchandani et al. fails to teach invention of claims 13-20

It is respectfully submitted that Lowry et al. in view of Mulchandani et al. fails to teach or suggest a method of preparing a dietary supplement, comprising "...forming a homogenous mixture substantially devoid of lipids by mixing...calcium caseinate,...whey protein,...L-carnitine and ...arginine, wherein protein is a sole dietary source of metabolic energy in said mixture", as set forth in amended claim 13 and defined by claims 14-20 as dependent therefrom, for the same reasons as were set forth herein above with respect to claims 1-8.

Accordingly, it is respectfully submitted that Lowry et al. in view of Mulchandani et al. fails to render claims 13-20 obvious under 35 U.S.C. 103(a). Reconsideration and allowance of claims 13-20 is therefore respectfully solicited.

Conclusion

Every effort has been made to amend applicant's claims in order to define his invention in the scope to which it is entitled. Accordingly, reconsideration and allowance of claims 1-20 is respectfully solicited.

Respectfully submitted,
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